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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Garrett Miller-Cunningham,
10 Plaintiff,

No. CV 17-02098-PHX-JAT

11 v.

ORDER

12 Michael MacAllister,
13 Defendant.
14

15 Plaintiff Garrett Miller-Cunningham, who is represented by counsel, brought this
16 civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1.) Defendant Michael
17 MacAllister,¹ moves for summary judgment, and Plaintiff opposes. (Docs. 37, 42.)

18 **I. Background**

19 In his Complaint, Plaintiff relevantly alleged as follows. On March 4, 2016, Plaintiff
20 was approached and questioned by Defendant MacAllister (hereinafter Defendant), a
21 former City of Maricopa police officer, while Plaintiff was at a Circle K convenience store.
22 (Doc. 1 at 10–11.) When Defendant learned that Plaintiff was carrying a handgun,
23 Defendant arrested Plaintiff for allegedly unlawfully carrying a firearm after having been
24 convicted of a felony, even though Plaintiff has never been convicted of a felony. (*Id.* at
25 12–13.) Defendant transported Plaintiff to the Pinal County Jail where he was booked and
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28 ¹ Pinal County was also named as a Defendant, but has been dismissed from the
action. (*See* Doc. 26.)

1 incarcerated. (*Id.* at 15.) Plaintiff was incarcerated for approximately three months before
2 the charge against him was dismissed. (*Id.* at 18–20.)

3 Plaintiff asserted claims of false arrest, false imprisonment, and malicious
4 prosecution. (*Id.* at 27). He requested declaratory and injunctive relief, damages, costs,
5 and attorney fees. (*Id.* at 29.)

6 Defendant previously sought to dismiss Plaintiff’s Complaint claiming entitlement
7 to qualified immunity. The Court denied the Motion to Dismiss on the ground that “factual
8 allegations in the Complaint are incomplete as to what information was known to
9 Defendant at the time of arrest.” (Doc. 28 at 7.) Accordingly, the Court could not decide
10 whether qualified immunity was appropriate at the motion-to-dismiss stage. (*Id.*)

11 Defendant now seeks summary judgment on the ground that he is entitled to
12 qualified immunity. (Doc. 37.)

13 **II. Summary Judgment Standard**

14 A court must grant summary judgment “if the movant shows that there is no genuine
15 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
16 Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The
17 movant bears the initial responsibility of presenting the basis for its motion and identifying
18 those portions of the record, together with affidavits, if any, that it believes demonstrate
19 the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.

20 If the movant fails to carry its initial burden of production, the nonmovant need not
21 produce anything. *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Co., Inc.*, 210 F.3d 1099,
22 1102-03 (9th Cir. 2000). But if the movant meets its initial responsibility, the burden shifts
23 to the nonmovant to demonstrate the existence of a factual dispute and that the fact in
24 contention is material, i.e., a fact that might affect the outcome of the suit under the
25 governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable
26 jury could return a verdict for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
27 242, 248, 250 (1986); *see Triton Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1221 (9th
28 Cir. 1995). The nonmovant need not establish a material issue of fact conclusively in its

1 favor, *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968); however,
2 it must “come forward with specific facts showing that there is a genuine issue for trial.”
3 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal
4 citation omitted); *see* Fed. R. Civ. P. 56(c)(1).

5 At summary judgment, the judge’s function is not to weigh the evidence and
6 determine the truth but to determine whether there is a genuine issue for trial. *Anderson*,
7 477 U.S. at 249. In its analysis, the court must believe the nonmovant’s evidence and draw
8 all inferences in the nonmovant’s favor. *Id.* at 255. The court need consider only the cited
9 materials, but it may consider any other materials in the record. Fed. R. Civ. P. 56(c)(3).

10 **III. Facts**

11 On March 4, 2016 at 10:45 p.m., while on patrol, former City of Maricopa police
12 officer Defendant MacAllister was dispatched to a Circle K convenience store in the City
13 of Maricopa on reports from Plaintiff that he was being followed by a “gang of Mexicans.”
14 (Doc. 38 ¶ 3; Doc. 41 ¶ 3.) Plaintiff stated to dispatch that he had a “20-round clip” in
15 “storage,” and if he had his “AK pistol,” he would have “enough for everybody.” (*Id.*)
16 Plaintiff admitted to having a Glock 23 handgun in his possession and that the weapon was
17 in his waistband. (*Id.*)

18 Defendant and Officer Burnias arrived at the Circle K and approached Plaintiff, who
19 raised his hands and showed the officers he had a firearm—a Glock 23 .40 caliber semi-
20 automatic handgun. (Doc. 38 ¶ 4, Doc. 41 ¶ 4.) Defendant took possession of the firearm
21 and conducted a stolen firearms check. (Doc. 38 ¶ 5, Doc. 41 ¶ 5.) Plaintiff told the officers
22 that he was being followed and his cousin had “put a hit on him” from the drug cartels.
23 (Doc. 38 ¶ 7, Doc. 41 ¶ 7.) Plaintiff pointed to a couple getting gasoline and stated that
24 they had followed him from California. (Doc. 38 ¶ 8, Doc. 41 ¶ 8.) When the officers
25 asked Plaintiff why he thought the couple were following him, he became agitated and told
26 Officer Burnias to “just shoot” him and “get it over with.” (Doc. 38 ¶ 9, Doc. 41 ¶ 9.)
27 Plaintiff identified his vehicle for the Officers and Defendant approached the vehicle and
28 noted a broken rear window. (Doc. 38 ¶ 10, Doc. 41 ¶ 10.) When Defendant asked about

1 the broken rear window, Plaintiff told him to stop asking “dumb-ass questions” and asked
2 for his firearm back. (Doc. 38 ¶ 11, Doc. 41 ¶ 11.) Plaintiff stated he did not trust the
3 Officers and called 9-1-1 dispatch, claiming the officers might “plant” something in his
4 vehicle. (Doc. 38 ¶ 12, Doc. 41 ¶ 12.) Defendant disassembled the firearm and placed the
5 disassembled pieces in the back of Plaintiff’s vehicle. (Doc. 38 ¶ 13, Doc. 41 ¶ 13.)
6 Defendant told Plaintiff he wished him a better day and the Officers left the scene. (Doc.
7 38 ¶ 14, Doc. 41 ¶ 14.)

8 Shortly after the first incident, Defendant was dispatched to the same scene, this
9 time stemming from a complaint that a subject was standing outside the Circle K
10 convenience store entrance allegedly holding a gun in his hand and acting suspiciously.
11 (Doc. 38 ¶ 15.) Plaintiff denies that he ever held or brandished his gun, but does not dispute
12 with any evidence that Defendant received a report that Plaintiff was holding a gun in his
13 hand. (Doc. 41 ¶ 15.) Defendant and Officer Burnias returned to the Circle K and
14 approached the subject of the complaint, who turned out to be Plaintiff, and detained him
15 for questioning. (Doc. 38 ¶ 16, Doc. 41 ¶ 16.) Defendant spoke with Plaintiff, who was in
16 possession of his reassembled firearm. (Doc. 38 ¶ 17, Doc. 41 ¶ 17.) Plaintiff told the
17 officers he had not pulled his gun out. (Doc. 38 ¶ 18, Doc. 41 ¶ 18.)

18 Defendant spoke with a Circle K employee, who stated that Plaintiff had been
19 outside the Circle K holding a gun in his hand, staring at passing vehicles, that customers
20 had complained about Plaintiff, and that she wanted Plaintiff to leave the property. (Doc.
21 38 ¶¶ 19-20, Doc. 41 ¶ 20.)) Plaintiff denies that he held or brandished his gun during this
22 time, but does not dispute that this is what the Circle K employee told Defendant. (Doc.
23 41 ¶ 19.)

24 Defendant then conducted a “wants and warrants” check on Plaintiff that came back
25 negative. (Doc. 38 ¶ 21, Doc. 41 ¶ 21.) Defendant then conducted a prior felony conviction
26 check through the dispatch center and was advised that Plaintiff had multiple felony
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1 convictions, including a conviction for grand theft of an automobile. (Doc. 38 ¶ 22.)² From
2 his personal experience, Defendant believed dispatch information on a suspect's prior
3 felony record was reliable and trustworthy. (*Id.*) The dispatch center stated that it was
4 forwarding the criminal history report to Maricopa Police Department Sergeant Paulsen,
5 who was also on the scene. (*Id.* ¶ 23)³ Prior to that evening, Defendant received
6 information from the same dispatch center on suspects' warrants, license status, and prior
7 convictions and had never before received incorrect information. (Doc. 38 ¶ 24; Doc. 41
8 ¶ 24.)

9 As Defendant continued talking to Plaintiff, Sergeant Paulsen informed Defendant
10 that Paulsen had confirmed that Plaintiff had prior felony convictions. (Doc. 38 ¶ 25.)⁴
11 Defendant believed Sergeant Paulsen's information was based on a review of the criminal
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14 ² Plaintiff objects to this fact asserting that it is inadmissible hearsay under Rules
15 602 and 802 of the Federal Rules of Evidence. (Doc. 41 ¶ 22.) The assertion that dispatch
16 told Defendant that Plaintiff had multiple felony convictions is not hearsay because it is
17 not being offered for the truth of the matter asserted. *See* Fed. R. Evid. 801(c) ("Hearsay
18 means a statement that: . . . a party offers for the truth of the matter asserted in the
19 statement."). Rather, Defendant offers this information to show what he believed and his
20 state of mind when dispatch gave him this information. Defendant does not offer this fact
21 to show that Plaintiff indeed had multiple felony convictions; rather, the Parties do not
22 dispute that the information given was incorrect and Plaintiff did not have multiple felony
23 convictions.

24 Moreover, although Plaintiff claims he objects under Rule 602 of the Federal Rules
25 of Evidence because the information is hearsay, Rule 602 requires that a witness may only
26 testify to evidence in his personal knowledge. Defendant may testify what dispatch told
27 him; that information is necessarily in his personal knowledge. It is true that Defendant
28 cannot testify that Plaintiff actually had felony convictions, but Defendant is not offering
to admit that information.

³ Plaintiff objects to this statement as hearsay. (Doc. 41 ¶ 23.) Because this
information is not being offered for the truth of the matter asserted, Plaintiff's objection is
overruled. *See supra* n.2.

⁴ Plaintiff objects to this statement as hearsay. (Doc. 41 ¶ 25.) Because this
information is not being offered for the truth of the matter asserted, Plaintiff's objection is
overruled. *See supra* n.2.

1 history report provided to Paulsen by the dispatch center. (*Id.* ¶ 26.)⁵ Defendant and
2 Sergeant Paulsen, Defendant’s on-scene supervisor, have worked together before, and
3 Defendant considers him a reliable Sergeant. (*Id.* ¶ 27.)⁶ Sergeant Paulsen told Plaintiff
4 that he had reviewed the prior felony convictions,⁷ but Plaintiff denied that he had a felony
5 and repeatedly insisted to the officers that he did not have a felony. (Doc. 38 ¶ 28.)⁸

6 Plaintiff was then arrested on a criminal prohibited possessor charge pursuant to
7 Arizona Revised Statutes § 13-3102(A)(4).⁹ (Doc. 38 ¶ 1; Doc. 41 ¶ 1.) Defendant asserts
8 that Officer Burnias placed handcuffs on Plaintiff and that Defendant took Plaintiff into
9 custody from there, but Plaintiff asserts that Defendant placed handcuffs on him. (Doc. 38
10 ¶ 29; Doc. 41 ¶ 29.) The Court will construe this dispute in favor of Plaintiff for the purpose
11 of deciding the motion for summary judgment, and will assume Defendant placed
12 handcuffs on Plaintiff. Shortly after the arrest, Defendant wrote a probable cause statement
13 indicating Plaintiff had prior felony convictions, including a 2007 conviction for felony
14 DUI, a 2009 conviction for possession of a controlled substance, and a 2009 conviction for
15 harm or death of an elder or dependent adult. (Doc. 38 ¶ 34; Doc. 41 ¶ 34.)

16 Plaintiff was ordered released on his own recognizance on March 5, 2016, with the
17 next court appearance scheduled for March 22, 2016. (Doc. 38 ¶ 38; Doc. 41 ¶ 38.)

19 ⁵ Plaintiff objects to this statement as hearsay. (Doc. 41 ¶ 26.) This is not a
20 statement, but rather Defendant’s belief, and is therefore not hearsay. *See* Fed. R. Evid.
21 801(c) (“hearsay is a statement . . .”).

22 ⁶ Plaintiff objects to this statement as hearsay. (Doc. 41 ¶ 26.) This is not a
23 statement, but rather Defendant’s belief, and is therefore not hearsay. *See supra* n. 5.

24 ⁷ Plaintiff objects to this statement as hearsay. (Doc. 41 ¶ 28.) Because this
25 information is not being offered for the truth of the matter asserted, Plaintiff’s objection is
26 overruled. *See supra* n.2.

27 ⁸ It is undisputed that Plaintiff had not been convicted of any felonies and the report
28 actually only reflected felonies for which Plaintiff had been charged.

⁹ Arizona Revised Statutes § 13-3102 relevantly provides “A person commits
misconduct involving weapons by knowingly . . . possessing a deadly weapon if such
person is a prohibited possessor.” Ariz. Rev. Stat. § 13-3102(A)(4).

1 Plaintiff failed to appear at his scheduled court date because he was later jailed in Riverside
2 County, California on a subsequent criminal offense, and was ultimately extradited to
3 Arizona and remained in jail during the pendency of his Arizona case. (Doc. 38 ¶ 39; Doc.
4 41 ¶ 39.) Plaintiff agrees that his subsequent confinement for failure to appear was not the
5 fault of Defendant. (Doc. 38 ¶ 40; Doc. 41 ¶ 40.)

6 **IV. Discussion**

7 Defendant argues that Plaintiff has failed to state a claim upon which relief may be
8 granted under the Fifth or Fourteenth Amendments and that he is entitled to qualified
9 immunity on Plaintiff's Fourth Amendment claim because his determination that there was
10 probable cause to arrest Plaintiff was mistaken, but reasonable.

11 **A. Fifth and Fourteenth Amendment Claims**

12 Defendant argues that Plaintiff fails to state a claim upon which relief can be granted
13 for violations of the Fifth and Fourth Amendments. Plaintiff did not respond to this
14 argument in his response to Defendant's Motion for Summary Judgment. (*See generally*
15 Doc. 42.) Defendant argues that it is unclear whether Plaintiff brings his Fifth Amendment
16 claim pursuant to the due process clause or the self-compulsion clause of the Fifth
17 Amendment, but in either case, Plaintiff has failed to state a claim upon which relief may
18 be granted because the Fifth Amendment protects against due process violations of the
19 federal government, the Fifth Amendment applies to state action through the Fourteenth
20 Amendment, and there is no claim that there was an unconstitutionally procured statement
21 in this case. Because Plaintiff did not respond and does not assert that he is seeking relief
22 under the Fifth Amendment, his Fifth Amendment claim will be dismissed.

23 Defendant further argues that the Fourteenth Amendment does not apply when the
24 Fourth Amendment provides constitutional protection for the conduct at issue. Because
25 Plaintiff did not respond to this argument, the Court assumes that the Fourth Amendment
26 provides adequate protection for the alleged constitutional violation at issue in this action.
27 *See, e.g., County of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998) (when "a particular
28 Amendment provides an explicit textual source of constitutional protection against a

1 particular sort of government behavior, that Amendment, not the more generalized notion
2 of substantive due process [under the Fourteenth Amendment], must be the guide for
3 analyzing these claims”) (citation and internal quotation marks omitted); *United States v.*
4 *Lanier*, 520 U.S. 259, 272 n.7 (1997) (“if a constitutional claim is covered by a specific
5 constitutional provision, such as the Fourth or Eighth Amendment, the claim must be
6 analyzed under the standard appropriate to that specific provision, not under the rubric of
7 substantive due process.”). Accordingly, Plaintiff’s Fourteenth Amendment claim will be
8 dismissed.

9 **B. Fourth Amendment Claim**

10 Defendant argues that he is entitled to qualified immunity because it was reasonable
11 for him to believe there was probable cause to arrest Plaintiff because he based his belief
12 on his own observation of Plaintiff possessing a handgun and he believed Plaintiff had been
13 convicted of felonies based on his reliance on (1) the dispatch center stating Plaintiff had
14 been convicted of multiple felonies, including grand theft of an automobile and (2) his
15 Sergeant’s review of Plaintiff’s criminal history and resulting information from the
16 Sergeant that Plaintiff had been convicted of a felony. Defendant argues that he had no
17 reason to doubt the reliability of the dispatch center and his Sergeant because he had
18 previously relied on both for correct information and guidance and had never been misled
19 by either source.

20 In Response, Plaintiff argues that there is no evidence that the dispatcher told
21 Defendant that Plaintiff had felonies because Defendant’s testimony is hearsay. As the
22 Court previously discussed, Defendant’s testimony is not hearsay. Plaintiff next argues
23 that “the name, address, telephone number, education, experience, qualifications and work
24 history of the alleged dispatcher ha[ve not] been disclosed to [Plaintiff].” (Doc. 42 at 5.)
25 There is no argument and no evidence in this record that Plaintiff ever sought such
26 discovery or brought any discovery dispute to the Court’s attention. Plaintiff has not
27 properly sought relief pursuant to Rule 56(d) of the Federal Rules of Civil Procedure and
28 has not explained why such discovery was unavailable to him.

1 Moreover, Plaintiff has failed to produce any evidence to create a disputed issue of
2 material fact regarding whether the dispatcher and/or Paulsen told Defendant that Plaintiff
3 had been convicted of felonies. Indeed, the only evidence before the Court shows that the
4 dispatcher told Defendant that Plaintiff had felonies, the dispatcher e-mailed a report
5 purportedly showing the felonies to Sergeant Paulsen, and Sergeant Paulsen told Defendant
6 that Plaintiff had been convicted of felonies.

7 Instead of presenting evidence raising a dispute issue of fact, Plaintiff argued for the
8 first time during oral argument that Defendant is not credible and that the Court cannot
9 consider his affidavit in the absence of corroborating testimony from Sergeant Paulsen and
10 the dispatcher confirming Defendant's version of events. To establish that Defendant is
11 not credible, Plaintiff argued that Defendant's police report is inconsistent with his
12 deposition testimony. Specifically, Plaintiff pointed to the section of the police report in
13 which Defendant wrote "[Plaintiff] was asked about the [felony] convictions. [Plaintiff]
14 advised he knew he had felony convictions, but he had already been arrested for them."
15 (Doc. 38-1 at 5.) In his deposition, Defendant testified as follows:

16 [Defendant]: On the way to—when we were processing him,
17 [Plaintiff] kept on asking me like: Why am I being arrested?
18 Why am I being arrested? It's not like everybody I arrested
19 don't ask that a hundred times. You know, Like: Why am I
20 being arrested? Why I am being arrest[ed]?

21 And I kept telling him: Hey, man, you can't have a firearm in
22 your possession as a felon and that's the reason why you're
23 being arrested.

24 And he was like, quote, like I remember him saying this,
25 because I remember him saying it with Paulsen and everybody
26 else, he kept saying: No. Those felonies are cleared. I have
27 already been arrested for those felonies. I don't have any
28 felonies out for me.

 And I was saying: It's not a warrant for your arrest. It's the
fact that you are a felon. And he goes: I'm telling you, I've
already been arrested for those felonies. And he goes: I know.

1 I am a—he said on the way—and like I said, man, if I had my
2 camera on, but he said on the way in: I know—I know I have
3 felonies, but I’ve already been arrested for them. I don’t have
4 anything. I was like: Garrett, it’s not a warrant. It’s that you
5 had felonies. You’re right that’s the reason why you can’t have
6 a firearm if you’re a felon.

7 [Plaintiff’s Counsel]: Isn’t it true, though, on the film he says
8 he has no felonies?

9 [Defendant]: Yes, absolutely.

10 [Plaintiff’s Counsel]: And he says that repeatedly?

11 [Defendant]: Yes.

12 (Doc. 38-5 at 10-11.) Even assuming that impeaching Defendant’s deposition testimony
13 on a collateral issue is enough to disregard his affidavit as to what dispatch and Sergeant
14 Paulsen told him, the Court disagrees with Plaintiff’s counsel’s assertion that Defendant’s
15 deposition testimony and the police report are inconsistent.

16 Regardless, Plaintiff’s counsel’s argument that the Court may not believe
17 Defendant’s undisputed testimony because Plaintiff’s counsel believes that he lacks
18 credibility is nothing more than conjecture. This conjecture is particularly troubling given
19 that Plaintiff’s counsel has had every opportunity to conduct discovery in this action and
20 to determine if there is evidence contradicting Defendant’s undisputed testimony, but has
21 not produced any evidence contradicting Defendant’s undisputed testimony. As discussed
22 herein, Defendant’s undisputed testimony, based on his personal knowledge, is admissible
23 evidence that the Court may consider in deciding whether summary judgment is
24 appropriate. In contrast, Plaintiff has not produced *any* evidence contradicting this
25 undisputed testimony, and, as a result, there is no disputed issue of material fact regarding
26 Defendant’s testimony. *See, e.g., T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*,
27 809 F.2d 626, 630 (9th Cir. 1987) (“the nonmoving party may not merely state that it will
28 discredit the moving party’s evidence at trial and proceed in the hope that something can
be developed at trial in the way of evidence to support its claim.”).

1 Contrary to Plaintiff's counsel's assertion that the Court is necessarily determining
2 Defendant's credibility by considering Defendant's undisputed testimony, the Court is not
3 making a credibility determination, but is basing its decision on the only admissible
4 evidence before the Court at summary judgment. Accordingly, the Court will conduct the
5 qualified immunity analysis in light of the admissible evidence in the record.

6 Government officials enjoy qualified immunity from civil damages unless their
7 conduct violates "clearly established statutory or constitutional rights of which a reasonable
8 person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). In deciding
9 if qualified immunity applies, a court must determine: (1) whether the facts alleged show
10 the defendant's conduct violated a constitutional right; and (2) whether that right was
11 clearly established at the time of the violation. *Pearson v. Callahan*, 555 U.S. 223, 230-
12 32, 235-36 (2009) (courts may address either prong first depending on the circumstances
13 in the particular case).

14 The qualified immunity inquiry "must be undertaken in light of the specific context
15 of the case, not as a broad general proposition." *Saucier*, 533 U.S. at 201. The plaintiff
16 has the burden to show that the right was clearly established at the time of the alleged
17 violation. *Sorrels v. McKee*, 290 F.3d 965, 969 (9th Cir. 2002); *Romero v. Kitsap County*,
18 931 F.2d 624, 627 (9th Cir. 1991). For qualified immunity purposes, "the contours of the
19 right must be sufficiently clear that at the time the allegedly unlawful act is [under]taken,
20 a reasonable official would understand that what he is doing violates that right;" and "in
21 the light of pre-existing law the unlawfulness must be apparent." *Mendoza v. Block*, 27
22 F.3d 1357, 1361 (9th Cir. 1994) (quotations omitted). Therefore, regardless of whether
23 the constitutional violation occurred, the officer should prevail if the right asserted by the
24 plaintiff was not "clearly established" or the officer could have reasonably believed that
25 his particular conduct was lawful. *Romero*, 931 F.2d at 627. "Qualified immunity gives
26 government officials breathing room to make reasonable but mistaken judgments about
27 open legal questions. When properly applied, it protects all but the plainly incompetent or
28 those who knowingly violate the law." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011)

1 (citation omitted). The purpose of qualified immunity is “to recognize that holding
2 officials liable for reasonable mistakes might unnecessarily paralyze their ability to make
3 difficult decisions in challenging situations, thus disrupting the effective performance of
4 their public duties.” *Mueller v. Aufer*, 576 F.3d 979, 993 (9th Cir. 2009).

5 “In the context of an unlawful arrest, . . . the two prongs of the qualified immunity
6 analysis can be summarized as: (1) whether there was probable cause for the arrest; and
7 (2) whether it is *reasonably arguable* that there was probable cause for arrest—that is,
8 whether reasonable officers could disagree as to the legality of the arrest such that the
9 arresting officer is entitled to qualified immunity.” *Rosenbaum v. Washoe Cty.*, 663 F.3d
10 1071, 1076 (9th Cir. 2011) (emphasis in original).

11 The Fourth Amendment requires an arrest to be supported by probable cause.
12 *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001). “Probable cause to arrest exists
13 when officers have knowledge or reasonable trustworthy information sufficient to lead a
14 person of reasonable caution to believe an offense has been or is being committed by the
15 person being arrested.” *United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007). Thus,
16 when an officer has either knowledge or reasonable trustworthy information sufficient to
17 lead a reasonable person to believe an offense has been, or is being completed by a specific
18 individual, that officer has probable cause to arrest that individual. *Id.*

19 “Whether probable cause exists depends upon the reasonable conclusion to be
20 drawn from the facts known to the arresting officer at the time of the arrest.” *Devenpeck*
21 *v. Alford*, 543 U.S. 146, 152 (2004). Furthermore, when it comes to trustworthy and
22 reliable information, the Ninth Circuit recognizes the collective-knowledge doctrine which
23 allows one officer’s knowledge of facts forming the basis of probable cause to be imputed
24 to another law officer. *United States v. Jensen*, 425 F.3d 698, 704-05 (9th Cir. 2005) (the
25 accepted practice of modern law enforcement is that an officer often makes arrests at the
26 direction of another law enforcement officer even though the arresting officer himself lacks
27 actual, personal knowledge of the facts supporting probable cause); *see also U.S. v.*
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1 *Hensley*, 469 U.S. 221 (1985) (police officers are entitled to rely on radio bulletins on
2 reasonable suspicion of other officers).

3 The undisputed facts before the Court show that Defendant relied on information
4 provided by the dispatch office and Sergeant Paulson in determining that Plaintiff had
5 previously been convicted of felonies. Although Plaintiff stated that he did not have a prior
6 felony, these statements do not negate the reasonableness of Defendant's reliance. While
7 it would have been ideal for Defendant to further inquire into the felonies based on
8 Plaintiff's denial, it is not unusual for a suspect to deny guilt, and Defendant's reliance on
9 dispatch and his Sergeant's averments that Plaintiff had been convicted of a felony was
10 reasonable given that he had no reason to question the integrity of the information they
11 gave to him. *See, e.g., United States v. Miguel*, 368 F.3d 1150, 1154 (9th Cir.
12 2004) (officers had reasonable suspicion for a traffic stop where their reliance on a
13 mistaken fact was reasonable and they had no reason to question the integrity of the
14 information in the database), *overruled on other grounds by United States v. Gasca-Ruiz*,
15 852 F.3d 1167 (9th Cir. 2017); *Ramirez v. City of Buena Park*, 560 F.3d 1012, 1023 (9th
16 Cir. 2009) ("Rarely will a suspect fail to proffer an innocent explanation for suspicious
17 behavior . . . officers do not have to rule out the possibility of innocent behavior" in
18 determining whether there is probable cause to arrest.).

19 Defendant arrested Plaintiff only after the dispatch office communicated that
20 Plaintiff had been convicted of one or more felonies, and after Sergeant Paulsen,
21 Defendant's on-scene supervising officer, who was known to be a reliable source, also
22 confirmed that Plaintiff had been convicted of one of more felonies. Indeed, despite both
23 sources having given incorrect information to Defendant, a reasonable officer in
24 Defendant's position would not have clearly known that his conduct was unlawful under
25 the circumstances. Accordingly, Defendant is entitled to qualified immunity as to
26 Plaintiff's Fourth Amendment claim and his Motion for Summary Judgment will be
27 granted.


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1 **IT IS ORDERED:**

2 (1) The reference to the Magistrate Judge is withdrawn as to Defendant's Motion
3 for Summary Judgment (Doc. 37).

4 (2) Defendant's Motion for Summary Judgment (Doc. 37) is **granted**, and the
5 action is terminated with prejudice. The Clerk of Court must enter judgment accordingly.

6 Dated this 12th day of March, 2019.

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12 James A. Teilborg
13 Senior United States District Judge
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